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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of)	MM Docket No. 93-88
EZ COMMUNICATIONS, INC.)	File No. BRH-910401C2
For Renewal of License of FM)	
Radio Station WBZZ(FM) on)	
Channel 229B at)	
Pittsburgh, Pennsylvania)	
ALLEGHENY COMMUNICATIONS GROUP,)	File No. BPH-910628MC
INC.)	
For a Construction Permit for a)	
New FM Broadcast Station on)	
Channel 229B at)	
Pittsburgh, Pennsylvania)	

To: Administrative Law Judge
Edward Luton

MASS MEDIA BUREAU'S COMMENTS ON
MEMORANDUM RE ADMISSABILITY OF
EXHIBITS 3 AND 4

1. On October 14, 1993, Allegheny Communications Group, Inc. (Allegheny) filed a memorandum in support of the admissability of its exhibits 3 and 4. The Mass Media Bureau hereby opposes the admission of exhibits 3 and 4.

2. Allegheny exhibit 3 is the arbitrator's decision in a proceeding between EZ Communications Inc. (EZ) and AFTRA. Exhibit 4 is a federal district court opinion enforcing the arbitrator's opinion. Both exhibits deal with a claim for severance pay brought by Liz Randolph, an employee of EZ's Pittsburgh radio station WBZZ. At the admissions session in this proceeding held on October 13, 1993, the Presiding Judge

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requested that each of the parties provide him with their view on whether the Liz Randolph matters can be relied on for any purpose in this proceeding if WBZZ did not violate any Commission rule. The Presiding Judge requested that counsel for Allegheny provide specific case citations to support receipt of its proposed exhibits 3 and 4.

3. In the Bureau's opinion, Allegheny has failed to provide authority to support its contention that exhibits 3 and 4 should be received.¹ The Hearing Designation Order in this proceeding, citing the Commission's Policy Regarding Character Qualifications in Broadcast licensing (Policy Statement), 102 FCC 2d 1179, n. 63 (1986), declined to add an issue to determine whether EZ violated Section 73.2080 of the Commission's rules based on the same information contained in Allegheny exhibits 3 and 4. 8 FCC Rcd 2448, 2449-50 (1993). At note 63 of its Policy Statement, the Commission stated that it may condition any Commission action on the outcome of an appeal. Here, the matter which is the subject of exhibits 3 and 4 was the subject of a settlement. Thus, there was no decision on appeal and no further inquiry appears justified.

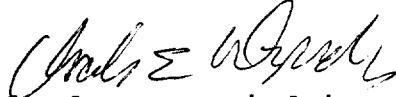
¹ Allegheny claims that, at a minimum, its exhibits should be received to rebut EZ's direct case exhibits 3 and 4 which were received to show that EZ was entitled to renewal expectancy credit for its superior EEO performance. In the Bureau's opinion, this argument is without merit because EZ exhibits 3 and 4 are irrelevant to EZ's renewal expectancy. The Bureau argued at the admissions session that EZ exhibits 3 and 4 should not have been received.

4. Allegheny contends that the Commission has held that "allegations concerning a licensee's violation of the Act, rules or policies can be relevant in the determination of the weight to be given a licensee's claim to renewal expectancy." GAF Broadcasting Company, Inc., 8 FCC Rcd 5496, 5499 (1993). In GAF, however, the Commission held that alleged violations of the Commission's EEO rules might be pertinent to an applicant's renewal expectancy even if no qualifying EEO issue were designated "if they raise a prima facie question about compliance with the rules." (Id.). As noted, the HDO in this case has already determined that the Randolph matter did not violate the Commission's EEO rules. Thus, the exhibits do not present a question of compliance with our rules and in the absence of an EEO issue are irrelevant.²

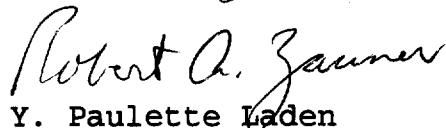
² Allegheny's reliance on Auburn Broadcasting Co., 57 RR 2d 1427, 1430-31 (1985), Richey Airwaves, Inc., 53 RR 2d 330 (1983) and L.M. Communications, Inc., 7 FCC Rcd 829, 70 RR 2d 864 (1992), is misplaced. None of these cases dealt with the use to which an alleged EEO violation could be put in a renewal proceeding absent a showing of a specific rule violation.

4. In sum, the Bureau opposes the receipt into evidence of Allegheny exhibits 3 and 4, and recommends that the Presiding Judge reconsider his rulings concerning EZ exhibits 3 and 4.

Respectfully submitted,
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October 18, 1993

CERTIFICATE OF SERVICE

Michelle C. Mebane, a secretary in the Hearing Branch, Mass Media Bureau certifies that she has on this 18th day of October 1993, sent by regular United States mail, U.S. Government frank copies of the foregoing **"Mass Media Bureau's Comments on Memorandum Re Admissability of Allegheny Exhibits 3 and 4"** to:

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